

Internal Revenue Service

Department of the Treasury

District
Director

1100 Commerce St., Dallas, Texas 75242

Date: DEC 31 1996

Employer ID Number:

Person to Contact:

Telephone Number:

Refer Reply To:

Dear Sir or Madam:

We have considered your application for recognition of exemption from Federal income tax under section 501(c)(3) of the Internal Revenue Code.

The information submitted indicates that you incorporated in [REDACTED] of [REDACTED]. On [REDACTED], your Articles of Incorporation were amended to state that you are organized exclusively for charitable, religious, educational, and scientific purposes.

Article II of your Bylaws states that your objectives include:

- To engage in the business of providing treatment and care for quadriplegic senior citizens;
- To hire and train individuals to become attendants who will provide treatment and care to quadriplegic senior citizens;
- To establish, administer and promote an educational program devoted to the development and training of individuals who have been hired to be and/or who wish to become attendants for quadriplegic senior citizens;
- To adopt standards and regulations governing the hiring and training of individuals who will become attendants to, and provide treatment and care to, quadriplegic senior citizens;

Your 1023 Application for Recognition of Exemption Under Section 501(c)(3) states that you shall provide a vehicle to assist in the acquisition and distribution of funds to support attendant care services for a limited number of quadriplegic senior citizens in [REDACTED]. You will provide accounting and record keeping with respect to the collection of funds to the quadriplegic, senior citizen "clients" supported by you. Your representatives will periodically communicate with local health care facilities such as local hospitals to identify prospective clients. You will insure that the clients qualify as both senior citizens and as quadriplegic.

The clients will be asked to identify one or more individuals who would be

will be willing to serve as their account executor. The account executor will provide information to appropriate parties with respect to you, including how, when and where to make contributions. The parties making contributions will be asked to express how they prefer that their contributions be utilized.

On a monthly basis, you will distribute all the funds collected. In cases where the contributors express a desire as to how their contributions should be distributed, you will consider their desire. In cases where there is no indication by the contributor as to how their contribution should be distributed, you will distribute those funds equally to your clients. You will distribute the funds to the appropriate account executors, who will use the funds to pay for the attendant care service of the client they represent.

Annually you will provide information to the contributors detailing the amount of their contributions so that they can report the appropriate amounts on their personal tax returns as charitable contributions.

Your sources of financial support will be contributions from family and friends of the quadriplegic, senior citizen clients, and contributions from local corporations. Your sole expense will be contributions on behalf of the quadriplegic senior citizens.

Your correspondence dated October 25, 1996 states the following:

- You intend to limit the number of quadriplegic senior citizens you will support to three;
- Your clients will be on a first come first served basis. [REDACTED] will identify potential clients. The prospective client will complete an application to you;
- Your [REDACTED] will consider whether the prospective clients' needs justify acceptance as a client. You will consider the severity of the paralysis, the clients financial status, and the support available in the form of help from the immediate family;
- A potential client is [REDACTED], who is an uncle of [REDACTED] and [REDACTED] was your initial director and is currently your secretary/treasurer. [REDACTED] is one of your incorporators;
- It is your understanding that an uncle is not a member of your family for tax exempt purposes. Therefore, you are not considering accepting any clients who are related to your director, incorporators, or to [REDACTED];
- No client shall receive more than a reasonable sum per annum than would be required to provide full time attendant care. That annual amount is \$[REDACTED];
- Contributors will be asked if they have a preference as to how, or for who, their contribution shall be used. You will consider their preference when you distribute the money. If the donation exceeds the per annum client limit, the contributor will be told that the money cannot be used for the

purpose the donor desires, and the donor will be given the option of applying it as a no-preference contribution, or having the contribution returned;

- The client's account executor will write the checks to pay the attendant salaries on behalf of the client. The account executor will likely be a close friend or family member of the client. A close friend or family member of the client will be aware of the people who would be interested in making contributions in support of the client;
- The funds collected on behalf of each specific client will be distributed to that client through the client's account executor;
- Having one director [REDACTED] is in the interest of efficiency. Leadership by committee is less effective than leadership by an individual. When the demand for your services increase, you will expand your board of directors.

Your correspondence dated November 20, 1996 states the following:

- [REDACTED] is not a client at this time, however he is being considered for client status. He has no account executor and no money has been distributed to him yet;
- The annual cost of [REDACTED] attendant care is \$[REDACTED]. If [REDACTED] is accepted as a client, you will provide up to \$[REDACTED] to him per year;
- No reason was provided as to how or why [REDACTED] has been considered a prospective client;
- Neither [REDACTED] nor [REDACTED] will contribute money on behalf of [REDACTED] if such contributions jeopardizes your integrity or violates the Internal Revenue Code;
- You have modified your contribution form to identify whether the contributor is a family member of the designated client. The form indicates that contributions made by family members of clients are not tax deductible;
- You do not guarantee that contributions will be used according to the wishes of the contributor, and therefore the contributions you collect are not designated contributions.

A copy of your revised contribution form was included with this correspondence. The contributor may select that their contribution be used for the attendant care of quadriplegic senior citizens in general, or that it be used for a specific client. The form defines family member as a spouse, ancestor, children, grandchildren, great grandchildren, and spouses of children, grandchildren and great grandchildren. It goes on to state that a brother or sister is not a family member for this purpose. At the bottom of this form it states that only contributions to the general fund or contributions in support of clients from contributors who are not family members are tax deductible.

Section 501(c) of the Code describes certain organizations exempt from Federal income tax under section 501(a) and reads, in part, as follows:

"(3) Corporations,*** fund, or foundation, organized and operated

exclusively for religious, charitable, scientific, *** literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, no part of the net earnings which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation (except as otherwise provided in subsection (h)), and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office."

Section 1.501(a)-1(c) of the Income Tax Regulations states that the term private shareholder or individual in section 501 refers to persons having a personal and private interest in the activities of the organization.

Section 1.501(c)(3)-1 of the regulations provides, in part, as follows:

"(a)(1) In order to be exempt as an organization described in section 501(c)(3), an organization must be both organized and operated exclusively for one or more of the purposes specified in such section. If an organization fails to meet either the organizational test or the operational test, it is not exempt."

"(c)(1) Distribution of earnings. An organization is not operated exclusively for one or more exempt purposes if its net earnings inure in whole or in part to the benefit of private shareholders or individuals."

"(d)(1)(ii) An organization is not organized or operated exclusively for one or more of the purposes specified in subdivision (i) of this subparagraph unless it serves a public rather than a private interest. Thus, to meet the requirement of this subdivision, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests."

Revenue Ruling 67-367, 1967-2 C.B. 188 states that an organization which operates a "scholarship" plan for making payments to pre-selected, specifically named individuals does not qualify for exemption under section 501(c)(3). The organization enters into so-called "scholarship" agreements with subscribers. A subscriber agrees to deposit a specified sum. The subscriber nominates a named child not over a specified age who will receive a "scholarship" from the organization if he matriculates at a college.

According to the Wendy L. Parker Rehabilitation Foundation, Inc. v. Commissioner, T.C. Memo. 1986-348 court case, a non-profit corporation organized for the purpose of providing care and treatment for coma victims in stages of recovery was denied exemption from taxation. The adverse ruling was

upheld by the Tax Court because a child of the founder and chief operating officer of the foundation was a substantial beneficiary of the services provided by the organization. This constituted inurement to the benefit of a private individual which is prohibited under exemption law. Although the taxpayer argued that the government based its private inurement test upon projected expenditures, the Court upheld this method, stating that approval or denial of tax exempt status may be based on projected as well as actual operational expenditures.

You are similar to the organization described in the Revenue Ruling 67-367. You accept contributions which are designated to pay for the attendant care of specific individuals. This is comparable to the paying of scholarships to pre-selected specifically named individuals. Your clients' account executors solicit contributions from friends and family members of the client, on behalf of the client. This is similar to the subscribers agreeing to deposit money on behalf of pre-selected scholarship recipients.

The only client you have considered thus far is [REDACTED]. In the Wendy L. Parker court case, a child of the chief operating officer of the foundation was a beneficiary of the foundations services. Therefore, you are similar to the organization described in this court case. It does not matter that you have not actually provided any assistance to the related person. The projection of this assistance is sufficient to jeopardize exemption.

It does not matter whether the contributor is related to the client the donor has designated. It is still a designated contribution. Contributions for designated persons serve the private benefit of the specified client rather than charitable purposes. The fact that you do not guarantee that the contribution will be for the benefit of the designated person does not change this.

Since you operate for the private benefit of specified clients, it is held that you are not entitled to exemption from Federal income tax as an organization described in section 501(c)(3) of the Code. You are required to file Federal income tax returns on Form 1120. Contributions to you are not deductible under section 170(c).

If you do not agree with these conclusions, you may, within 30 days from the date of this letter, file in duplicate a brief of the facts, law, and argument that clearly sets forth your position. If you desire an oral discussion of the issue, please indicate this in your protest. The enclosed Publication 892 gives instructions for filing a protest.

If you do not file a protest with this office within 30 days of the date of this report or letter, this proposed determination will become final.

If you do not protest this proposed determination in a timely manner, it will be considered by the Internal Revenue Code as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Internal Revenue Code

provides in part that, "A declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the Court of Claims, or the district court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service."

If this determination letter becomes a final determination, we will notify the appropriate State Officials, as required by section 6104(c) of the Code, that based on the information we have, we are unable to recognize you as an organization of the type described in Code section 501(c)(3).

If you agree with these conclusions or do not wish to file a written protest, please sign and return Form 6018 in the enclosed self-addressed envelope as soon as possible. You should also file the enclosed Federal income tax return(s) within 30 days with the Chief, Employee Plan/Exempt Organization Division 1100 Commerce, Dallas, Texas 75242.

If you have any further questions, please contact the person whose name and telephone number are shown at the beginning of this letter.

Sincerely,



Bobby E. Scott
District Director

Enclosures:
Publication 892
Form 6018